In the High Court of Judicature at Madras

Dated: 08.02.2005

Coram:

The Honourable Mr. Justice S.R.SINGHARAVELU

Second Appeal No. 1046 of 1994

Madras Metropolitan Development
Authority, represented by its
Member-Secretary ..Appellant/ 2nd defendant

..vs..

1. P.Muthukrishnan
2. P.Venkatesan
3. P.Damodaran
4. P.Sriramulu ..Respondents/ Plaintiffs

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 19.04.1993 in A.S.No.213 of 1992 on the file of VI Additional Judge, City Civil Court, Madras, confirming the judgment and decree dated 18.12.1990 in O.S.No.2533 of 1988 on the file of IV Assistant Judge, City Civil Court, Madras.

For Appellant : Mr.V.Perumal for CMDA
For Respondents : Mr.A.J.Abdul Razak

JUDGMENT

This Second Appeal is directed against the decree and judgment dated 19.04.1993 in A.S.No.213 of 1992 of the VI Additional Judge, City Civil Court, Madras, in confirming the decree and judgment passed on 18.12.1990 in O.S.2533 of 1988 by the IV Assistant Judge, City Civil Court, Madras.

2. While admitting the Second Appeal, the following substantial question of law was framed:

> "When application to regularise unauthorised construction has been refused by an order dated 5-4-1988, and there was not even a further appeal to the Government, are the Courts below right in granting the prayer in the suit ?"

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3. The suit was for declaration that notice dated 21.02.1988 issued to one Padmanabhan, father of plaintiffs under section 56 of Tamil Nadu Act 35 of 1972 (Tamil Nadu Town and Country Planning Act, 1971) as illegal and for permanent injunction not to demolish the suit building by virtue of the above said notice. The suit was decreed by both the courts below.

4. It is not in dispute that the suit land belongs to the plaintiffs by virtue of a sale deed in their favour dated 15.12.1986, marked as Ex.A-5. Admittedly, the plaintiffs have constructed ground floor and three floors in the premises, measuring to an extent of 556 sq.ft., which is roughly equivalent to 60 sq.metres. The said building was completed and assessed to tax on 28.12.1987 and this is evident from Ex.A-4. The plaint was presented on 08.03.1988.

5. The counsel for the respondents / plaintiffs pointed out that a notice like Ex.A-1 under section 56 of Act 35 of 1972 shall be issued within three years of such development and that shall be served on the owner requiring him within such period, being not less than one month, to take steps as may be specified in the notice. Section 56 of the above Act further provided that, in cases specified in class (a) or (c) above, to restore the land to its condition before the said development took place. Proviso (2) to section 56 provides that in particular, any such notice may, require the demolition or alteration of any building, and the discontinuance of any use of land or building. Proviso (3) to section 56 provides that any person aggrieved by such notice may, apply for permission under section 49 for the retention of the land, or any buildings or for the continuance of any use.

6. Counsel for the respondents / plaintiffs also drew my attention to section 107 of the said Act, which provides the service of notice how to be effected, according to which when any notice is required by this Act, to be served upon or issued or presented to any person, such service shall be effected by tendering the said document to such person and if such person is not found, by leaving such document at his last known place of abode; or if his address elsewhere is known, by forwarding such document to him by registered post and if none of the means aforesaid is available, by causing a copy of such document to be affixed on some conspicuous part of the land or building, if any, to which the document relates.

7. Counsel for the respondents / plaintiffs again pointed out that without adhering to the means provided under section 107 of the Act, publication was effected by the appellant / defendant in one issue of INDIAN EXPRESS, through Ex.A-1. Thus, it was argued that the notice was not also properly served and that it was not addressed to the proper owner, namely, the plaintiffs,

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whereas it was found addressed to one Padmanabhan, the father of the plaintiffs. He is not connected with the ownership of the property.

8. Counsel for the respondents / plaintiffs also relied upon S.RADHAKRISHNAN AND OTHERS ..vs.. GOVERNMENT OF TAMIL NADU, ETC. (1994 WRIT L.R.365), wherein it was mentioned that for a notice to demolish unauthorised construction, the limitation period is three years from construction within which it should be issued and issue of notice beyond the period is illegal. Thus, the contention of the respondents / plaintiffs is that first of all, the notice was not sent to the owner; secondly, it was not served in a proper manner provided under section 107 of the said Act and that thirdly, no further notice to the plaintiffs can be issued since there is lapse of three years by now.

9. Counsel for the appellant / defendant relied upon the decision reported in CMDA ..vs.. ABDUL REHMAN (2002 (2) CTC 230), wherein it was found that Civil Courts jurisdictions are barred by section 101 read with sections 49, 56 and 80 of Town and Country Planning Act, 1971. In that case, reliance was placed on the decision reported in STATE OF ANDHRA PRADESH ..vs.. MANJETI LAXMI KANTHA RAO (2000(3) SCC 689), wherein the Supreme Court has found that where the statute provides for finality of the order of the prescribed authority or Special Tribunal, but where such authority or Tribunal does not comply with the provisions of the relevant statute or does not act in conformity with the basic rules of judicial procedure, it was held that the jurisdiction of civil court would not be excluded. Similar observation was found in a Bench decision of the Supreme Court in DHULABHAI..vs.. STATE OF MADHYA PRADESH (AIR 1969 SC 78), wherein the following principle regarding exclusion of jurisdiction of civil court was laid down.

> "Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit. Such provisions, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure".

That if it is shown that the appellant has not acted in issuance of Ex.A-1 notice in conformity with the provisions of Act 35 of 1972, then the Civil Courts' jurisdiction may not be ousted.

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10. The notice under Ex.A-1 was, no doubt, purportedly issued under section 56 of the said Act. Before dealing with that provision of law, we have to see the Development Control Rules for Chennai Metropolitan Area (as amended up to September 2004) issued by the Chennai Metropolitan Development Authority, wherein Part II deals with Use Zones and Rule 7 deals with Primary Residential Use Zone, whereas Rule 8 deals with Mixed Residential Use Zone. Rule 8(d) provides that the extent of plot size, plot frontage, floor space index, etc., in the zone shall be regulated according to Rule 7(d). The suit premises is a mixed residential zone, to which the above Rule 8 will be applicable. But according to Rule 8(d), for such areas Rule 7(d) also is applicable. Rule 7(d) provides, a Table thereunder; according to which, the minimum extent of plot is 80 sq.metres in sense it was set apart for continuous building like the instant one. Thus, a building built in an area less than 80 sq.metres is prohibited under the above said Table. It is, therefore, no permission for the same would be accordable under the provisions of Act 35 of 1972; whereas section 56(1)(a) of the Act applies only to a case where permission for constructing a building was required under that Act.

11. A combined reading of above provision with Rule 7(d) and the Table given thereunder of the Development Control Rules for Chennai Metropolitan Area, would go to show that no notice under section 56 of the Act is issuable for the suit premises, which is built in an area less than 80 sq.metres. To put it in a different manner, permission itself is not accordable for any building built in an area less than 80 sq.metres in George Town and other areas where continuous buildings are permissible as found in the above said Table. Since this building is found constructed in George Town area, the above Table becomes applicable and no permission for the said building is accordable by the Town Planning Authority; and to repeat again, notice under section 56 of the said Act is issubale only where building without permission was constructed and that, that permission is required under the Act. Here is a case, where permission was not required under the Act and since the building was built without such permission, section 56 will not be applicable and what remains is that, even without a notice under section 56, the Town and Country Planning Authority is entitled to demolish the building as it contravenes the particulars found in the Table given under Rule 7(d) of the Development Control Rules for Chennai Metropolitan Area. Thus, the issuance of notice under section 56 through Ex.A-1 is not an act done in conformity with the provisions of law and therefore, civil courts' jurisdiction may not be ousted.

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12. But inasmuch as a notice was preferred to have been issued under Ex.A-1 by the appellant / defendant, where even no such notice was required by law to be issued and that they are entitled to demolish building even without any such notice, a suit to declare such notice as illegal and consequential relief for permanent injunction not to demolish cannot be granted. Again, the argument that such notice should have been issued within three years is also not applicable to the present facts of the case as notice issued under Ex.A-1 is redundant and unnecessary to the facts and circumstances of this case. Therefore, the relief granted by the courts below is erroneous and unacceptable and so, they are to be set aside and the substantial question of law is answered against the plaintiffs.

13. The Second Appeal is allowed and the decree and judgment of the courts below are set aside and the suit is dismissed. No costs.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar,
City Civil Court,
Madras.

Copy to:
The Record Keeper,
V.R.Section,
High Court,Madras.

+ 1 cc to Mr.V.Perumal, Advocate SR No.5444

+ 1 cc to Mr.A.J.Abdul Razak, Advocate SR 5465

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